

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 : CR-16-00403
 -against- :
 : United States Courthouse
 AMAYA-SANCHEZ, et al, : Central Islip, New York
 :
 Defendant. : June 25, 2018
 : 2:28 p.m.
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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: RICHARD P. DONOGHUE, ESQ.
UNITED STATES ATTORNEY
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Central Islip, New York 11722
BY: JOHN J. DURHAM, ESQ.
PAUL G. SCOTTI, ESQ.
MICHAEL T. KEILTY, ESQ.

For Deft Aguilar-Lopez: ANTHONY L. RICCO, ESQ.
KENNETH J. MONTGOMERY, ESQ.

For Deft Suarez: YING STATFORD, ESQ.

For Deft Torres: ELIZABETH E. MACEDONIO, ESQ.

For Deft Alexi Saenz: DAVID A. RUHNKE, ESQ.
 ARNOLD J. LEVINE, ESQ.

For Deft Serrano: WILLIAM D. WEXLER, ESQ.

For Deft Flores: SANFORD N. TALKIN, ESQ.

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
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1 (The following took place at 2:28 p.m.)

2 THE CLERK: Calling case 16-CR-403, USA vs
3 Amaya, et al.

4 Counsel, please state your appearance for the
5 record.

6 MR. DURHAM: John Durham and Paul Scotti and
7 Michael Keilty for the United States. Good afternoon.

8 THE COURT: Good afternoon

9 MR. RICCO: For Mario Aguilar-Lopez, Anthony
10 Ricco and Ken Montgomery. Good afternoon.

11 THE COURT: Good afternoon.

12 MS. STATFORD: For Jose Suarez, Ying Statford
13 for George Goltzer.

14 THE COURT: Good afternoon, Ms. Statford

15 MS. MACEDONIO: Good afternoon, your Honor.
16 Elizabeth Macedonio for Kevin Torres who is the third
17 person in line.

18 THE COURT: Good afternoon, Ms. Macedonio.

19 MR. RUHNKE: Good afternoon, your Honor. David
20 Ruhnke and Arnold Levine for Alexi Saenz who is the fourth
21 gentleman in line.

22 THE COURT: Good afternoon.

23 MR. WEXLER: William Wexler on behalf of Marlon
24 Serrano.

25 THE COURT: Good afternoon, Mr. Wexler.

1 MR. TALKIN: Your Honor, Sam Talkin for Ever
2 Flores, who is the first one in the box. And also Susan
3 Marcus who is my co-counsel, she contacted me and she
4 asked that I stand in for her.

5 THE COURT: Thank you, Mr. Talkin.

6 And as noted all seven defendants are here. I'm
7 sorry, all six defendants are in the jury box.

8 THE INTERPRETER: I'm checking the headsets for
9 the defendants.

10 THE COURT: We have all six defendants present
11 with the Spanish interpreter interpreting for all six of
12 them. I just ask that the interpreter be sworn and state
13 his name for the record.

14 (Interpreter JAMES HONTORIA, was duly sworn.)

15 THE CLERK: Please state your name and spell it
16 for the record.

17 THE INTERPRETER: James Hontoria,
18 H-O-N-T-O-R-I-A

19 THE COURT: This is a status conference for
20 Group 4. Since the last time we had a status conference a
21 number of individuals have been indicted and added to
22 Group 4.

23 So just so the record is clear, we are dividing
24 up Group 4 into two groups today because we can not
25 accommodate all of the defendants in the courtroom and

1 lawyers at once.

2 And my understanding is based upon the return of
3 the Superseding Indictment S-5, that Mr. Aguilar-Lopez,
4 Mr. Suarez, Mr. Alexi Saenz, Mr. Alex Saenz have to be
5 arraigned.

6 Are your clients prepared to be arraigned on the
7 soup Superseding Indictment S-5?

8 A VOICE: Yes.

9 THE COURT: All right. The other defendants,
10 Mr. Torres, Mr. Serrano and Mr. Flores have already been
11 arraigned.

12 Mr. Aguilar-Lopez have you had time to review
13 and discuss the Superseding Indictment S-5 with Mr. Ricco
14 and Mr. Montgomery for purposes of the arraignment?

15 DEFENDANT AGUILAR-LOPEZ: Yes.

16 THE COURT: Do you waive or give up the public
17 reading of the entire indictment?

18 DEFENDANT AGUILAR-LOPEZ: Yes.

19 THE COURT: And how do you plead; guilty or not
20 guilty?

21 DEFENDANT AGUILAR-LOPEZ: Not guilty.

22 THE COURT: Mr. Aguilar-Lopez has entered a not
23 guilty plea.

24 Mr. Suarez, have you had sufficient time to
25 review and discuss Superseding Indictment S-5 with your

1 attorneys, Ms. Statford?

2 DEFENDANT SUAREZ: Yes.

3 THE COURT: Do you waive or give up the public
4 reading of the indictment?

5 DEFENDANT SUAREZ: Yes.

6 THE COURT: How do you plead; guilty or not
7 guilty?

8 DEFENDANT SUAREZ: Not guilty.

9 THE COURT: Mr. Suarez has entered a not guilty
10 plea.

11 Mr. Alexi Saenz, have you had sufficient time to
12 review and to discuss the Superseding Indictment S-5 with
13 your attorneys?

14 DEFENDANT ALEXI SAENZ: Yes.

15 THE COURT: Do you waive or give up a public
16 reading of the entire indictment?

17 DEFENDANT ALEXI SAENZ: Yes.

18 THE COURT: How do you plead; guilty or not
19 guilty?

20 DEFENDANT ALEXI SAENZ: Not guilty.

21 THE COURT: Mr. Alexi Saenz has entered a not
22 guilty plea.

23 Mr. Alex Saenz, have you had sufficient time to
24 discuss and review the Superseding Indictment with your
25 attorneys?

1 MR. DURHAM: Your Honor, the second Saenz
2 brother is Jairo. He is going to be in the next group.

3 THE COURT: I'm sorry. Yes, I just repeated it
4 twice. My mistake.

5 It's Mr. Serrano. No, Mr. Serrano has been
6 arraigned. So for this group those are the only ones. Is
7 that correct?

8 MR. DURHAM: That is correct.

9 THE COURT: I'll now hear from the government
10 regarding the status of the case before I hear from
11 defense counsel.

12 MR. DURHAM: Your Honor, obviously there's been
13 returned a superseding indictment. The government will be
14 providing additional discovery to defense counsel for the
15 new charges. Additionally with respect to the new
16 defendants we will be making sure that they have access to
17 all of the discovery that was previously provided in this
18 case.

19 With respect to two of these defendants,
20 Mr. Suarez and Mr. Aguilar-Lopez, they have previously
21 been adjudicated not -- by the Attorney General. So what
22 we're proposing to the court is to divide them into a
23 separate trial group now.

24 With the respect to the other defendants that
25 have been included in the case or they have additional

1 capital charges, so our proposal, I spoke with defense
2 counsel for both of the defendants, we'll divide those
3 into a group, a group called Trial Group 6.

4 With respect to the other defendants, obviously
5 I have with me the discovery. They needed time to review
6 the death penalty submission. So we would ask the Court
7 to exclude time and set a status conference for October
8 5th at 11 o'clock for Trial Group 4. And with respect to
9 the two defendants, if the Court would with divide them
10 into Trial Group 6, we would ask for September 5th at
11 1:30.

12 We just ask the court to exclude time until
13 those dates because the death penalty memos and reviewing
14 discovery, as well as the fact that the court has
15 designated this to be a complex case.

16 THE COURT: I'm going ask each of the defense
17 counsel whether the next date for the status conference is
18 agreeable to you and your client and if you're willing to
19 exclude the time.

20 I am kind of glad that there was a proposal to
21 divide, further divide this group, because I was actually
22 thinking along the same lines.

23 So Mr. Ricco and Mr. Montgomery, is your client
24 agreeable to the September 5th date?

25 MR. MONTGOMERY: Yes, your Honor, good morning.

1 Because this is now a --

2 THE COURT: Please use the mic.

3 MR. MONTGOMERY: With respect to
4 Mr. Aguilar-Lopez, it makes more sense for him to be in a
5 trial track differently than those defendants who have
6 just been brought in who are going to be subject to a
7 lengthy death penalty process.

8 THE COURT: And he is agreeable to exclude the
9 time until September 5th.

10 MR. MONTGOMERY: Yes, your Honor. September 5th
11 for Mr. Lopez.

12 THE COURT: Ms. Statford?

13 MS. STATFORD: Yes, your Honor. We are
14 agreeable to moving to Trial Group 6 -- no longer is a
15 death penalty.

16 THE COURT: All right. And you want to waive
17 the time?

18 MS. STATFORD: He is waiving the time.

19 THE COURT: If you would like, I would set a
20 trial date. If you want to set a trial date or you want
21 to wait until September.

22 MR. RICCO: Wait until September.

23 THE COURT: Just so you can prepare. And I
24 don't know what other obligations you have. I anticipate
25 we can set a briefing schedule in September, that the

1 trial would be January is what I'm looking at. So you
2 might want to talk to the government and see for the next
3 conference if you can agree on a schedule that might make
4 that work.

5 MR. RICCO: We'll do that.

6 THE COURT: And Ms. Macedonio, is the October
7 5th date acceptable to and you your client, and you want
8 to wave the time?

9 MS. MACEDONIO: Yes, your Honor.

10 THE COURT: Mr. Ruhnke and Mr. Levine?

11 MR. RUHNKE: Yes.

12 THE COURT: Mr. Wexler?

13 MR. WEXLER: Yes, your Honor.

14 THE COURT: And Mr. Talkin?

15 MR. TALKIN: Yes, your Honor.

16 THE COURT: Okay, let me just confirm that with
17 your clients.

18 First, Mr. Aguilar-Lopez and Mr. Suarez, you
19 have heard we are putting you now in a separate group for
20 trial purposes which we'll call Trial Group 6. We're
21 going to have a status conference on September 5th. At
22 which time I suspect that we'll set a briefing schedule
23 for any motions that your lawyers wish to makes on your
24 behalf, and a trial date which I'm hoping will be in
25 January.

1 By signing this waiver you're agreeing to
2 exclude the time under the Speedy Trial Act to until
3 September 5th to have you and your attorneys to have time
4 to continue to decide which way to proceed with respect to
5 the case, review the discovery, and to prepare motions and
6 for trial.

7 Is that your wish, Mr. Aguilar-Lopez?

8 Is that your wish?

9 DEFENDANT AGUILAR-LOPEZ: Yes.

10 THE COURT: Mr. Suarez?

11 DEFENDANT SUAREZ: Yes.

12 THE COURT: Okay, and for the other four
13 defendants, we're adjourning your case until October 5th
14 so that your attorneys can continue to prepare memoranda
15 to the Department of Justice under the decision of whether
16 or not to seek the death penalty. And obviously with
17 respect to Mr. Serrano and Mr. Flores -- Mr. Torres, that
18 process is obviously just beginning to get started.

19 So are you willing to exclude the time until
20 October 5th to allow that to occur?

21 Mr. Torres?

22 DEFENDANT TORRES: Yes.

23 THE COURT: Mr. Alexi Saenz?

24 DEFENDANT ALEXI SAENZ: Yes.

25 THE COURT: Mr. Serrano?

1 DEFENDANT SERRANO: Yes.

2 THE COURT: And Mr. Flores?

3 DEFENDANT FLORES: Yes.

4 THE COURT: Okay, so those requests are granted.

5 Group 6 is scheduled for a status conference on
6 September 5th at 1:30 p.m. And I exclude time from today
7 until September 5th in that group under Title 18 United
8 States Code Section 3161(h)(7)(A), in order to allow the
9 defendants and their counsel time to decide how they wish
10 to proceed, to negotiate with the government if they wish
11 to, and to decide which motions they want to make and to
12 prepare for trial.

13 I find that the ends of justice served by
14 granting a continuance outweigh the best interests of both
15 the government and these defendants in Group 6 in a
16 speedier trial.

17 With respect to the other four defendants who
18 are in Group 4, I exclude the time until October 5th,
19 which we'll schedule for a conference on that date at
20 1:30.

21 First, the designation of that group is --

22 THE CLERK: At 11 a.m.

23 THE COURT: At 11 a.m.

24 The designation of this group as a complex case
25 continues. It is only increased based upon the addition

1 of new defendants and new charges.

2 Independent of that I find that it is in the
3 interests of justice to allow the defendants and their
4 counsel time to continue to prepare and submit memoranda
5 to the Department of Justice on the death penalty issue,
6 as well as to review the discovery, and also to prepare
7 the case forward.

8 For those reasons I find that the ends of
9 justice served by granting the continuance outweigh the
10 best interests of both the public and these defendants in
11 Group 4 to a speedier trial. And I so order both of those
12 waivers.

13 I would just ask, and maybe Mr. Ruhnke and
14 Mr. Levine, I'll ask you. I know that you were giving an
15 estimate at the last conference as to when you thought the
16 memo might be into the Department of Justice. And I think
17 I was told potentially in August. I just wanted to see
18 whether you believe that is still on schedule?

19 MR. RUHNKE: I believe that is no longer on
20 schedule for, among other reasons, that in the superseding
21 indictment the government with respect our client has
22 alleged three additional death eligible murders, the facts
23 of which we are going to have to be familiar with before
24 we can really go to the Department of Justice. With that
25 informal discussion with Mr. Durham about it, we believe

1 that by the end of the year we will have our memo to the
2 Department of Justice, your Honor.

3 THE COURT: Okay, that sounds reasonable based
4 upon the additional charges. Thank you.

5 All right, any issues the government wishes to
6 address with respect these defendants?

7 MR. DURHAM: No, your Honor.

8 THE COURT: All right, anything else the defense
9 counsel need to address with the Court?

10 A VOICE: No.

11 THE COURT: All right, thank you.

12 (The proceedings were concluded at 2:45 p.m.)
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